

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

PFLAG, INC., *et al.*,

Plaintiffs,

V.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants.

Civil Action No. 8:25-cv-337-BAH

NOTICE OF RULEMAKING

1. Defendant U.S. Department of Health and Human Services (HHS) hereby provides notice to the Court of its recent final rule, Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability, 90 Fed. Reg. 27,074 (June 25, 2025) (the “Final Rule”).
2. Among other things, the Final Rule addresses the statutory requirement that issuers of non-grandfathered individual and small group market health insurance cover “essential health benefits” (“EHBs”) in their insurance plans. *See id.* at 27,152–166. The statute requires that the HHS Secretary “ensure that the scope of the essential health benefits ... is equal to the scope of benefits provided under a typical employer plan, as determined by the Secretary.” 42 U.S.C. § 18022(b)(2)(A).
3. The Final Rule states that the Secretary has determined that services defined as “specified sex-trait modification procedures” are “not typically included in employer-sponsored plans,” and that health insurance issuers subject to EHB requirements therefore “may not provide coverage for sex-trait modification as an EHB beginning

with PY 2026.” 90 Fed. Reg. at 27,152. The Final Rule “does not prohibit health plans from voluntarily covering specified sex-trait modification procedures as non-EHB consistent with applicable State law, nor does it prohibit States from requiring the coverage of specified sex-trait modification procedures, subject to the rules related to State-mandated benefits at § 155.170.” *Id.* at 27,164.

4. “Specified sex-trait modification procedure” is defined to include “any pharmaceutical or surgical intervention that is provided for the purpose of attempting to align an individual’s physical appearance or body with an asserted identity that differs from the individual’s sex either by: (1) Intentionally disrupting or suppressing the normal development of natural biological functions, including primary or secondary sex-based traits; or (2) Intentionally altering an individual’s physical appearance or body, including amputating, minimizing or destroying primary or secondary sex-based traits such as the sexual and reproductive organs.” *Id.* at 27,223. The term “does not include procedures undertaken: (i) To treat a person with a medically verifiable disorder of sexual development; or (ii) For purposes other than attempting to align an individual’s physical appearance or body with an asserted identity that differs from the individual’s sex.” *Id.* at 27,223–24.
5. The Final Rule acknowledges the preliminary injunction issued in this case involving certain provisions of EO 14,168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, and EO 14,187, *Protecting Children from Chemical and Surgical Mutilation*, and states that the agency acted “independently of the executive orders because specified sex-trait modification procedures are not typically included in employer health plans and

therefore cannot legally be covered as EHB.” *Id.* at 27,165; *see also id.* at 27,153. It further states: “We acknowledge that two courts have issued preliminary injunctions relating to the E.Os described above, and we do not rely on the enjoined sections of the executive orders in making this proposal. The finalized policy does not conflict with those preliminary injunctions because, among other things, it is based on independent legal authority and reasons and not the enjoined sections of the executive orders. Further, this policy as finalized will not be effective until PY 2026, and will not be implemented, made effective, or enforced in contravention of any court orders.” *Id.*

6. The Final Rule also states HHS’s intent to notify this Court of the Final Rule “after it has been published in the Federal Register.” *Id.* at 27,153 n.189; 27,165 n.217.

Dated: July 11, 2025

Respectfully submitted,

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